

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID BROWN,

Plaintiff,

Case No. 1:16-cv-235

v.

Honorable Robert Holmes Bell

WILLIE SMITH et al.,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. The matter is before the Court on Plaintiff's motion for leave to supplement his complaint (ECF No. 5). Federal Rule of Civil Procedure 15(d) permits a party to seek leave of Court to supplement its pleadings to set out transactions, occurrences, or events that happened after the date of the pleading to be supplemented. Here, Plaintiff seeks leave to file additional allegations. The proposed supplement adds claims against some of the Defendants named in Plaintiff's original complaint as well as some new Defendants. Moreover, some of the new allegations relate to events that transpired before he filed his original complaint and some of them relate to events that transpired after that date. Thus, Plaintiff seeks to do more than merely supplement his complaint. He seeks to amend it. Accordingly, the Court will consider Plaintiff's motion as a motion to amend his complaint.

Under Fed. R. Civ. P. 15(a), a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. Leave of court is not required. Plaintiff's motion is therefore denied as unnecessary.

If Plaintiff files an amended pleading as of right under Rule 15(a), it must be submitted on the form provided by this Court. *See* W.D. Mich. LCivR 5.6(a). The Court directs the Clerk to send to Plaintiff a copy of the form complaint under 42 U.S.C. § 1983 for a civil action by a person in state custody. The amended complaint will take the place of the original complaint,¹ so it must include all of the Defendants that Plaintiff intends to sue and all of the claims that Plaintiff intends to raise in one pleading. Plaintiff need not re-submit supporting exhibits filed with the original complaint. The case number shown above must appear on the front page of the amended complaint. As Plaintiff has expressed his intention to amend the complaint, he must do so within 28 days of the date of this order.

Therefore,

IT IS ORDERED that Plaintiff's motion for leave to supplement, construed as a motion to amend (ECF No. 5), is DENIED without prejudice, as unnecessary.

IT IS FURTHER ORDERED that the Clerk shall send to Plaintiff a copy of the form complaint under 42 U.S.C. § 1983 for a civil action by a person in state custody. Plaintiff shall file his amended complaint within 28 days.

Dated: August 1, 2016

/s/ Ray Kent

RAY KENT

United States Magistrate Judge

¹“An amended complaint supersedes an earlier complaint for all purposes.” *Calhoun v. Bergh*, 763 F.3d 409, 410 (6th Cir. 2014) (citing *In re Refrigerant Compressors Antitrust Litigation*, 731 F.3d 586, 589 (6th Cir. 2013)); *see also Pacific Bell Telephone Co. v. Linkline Commc'ns, Inc.*, 555 U.S. 438, 456 n. 4 (2009). This rule applies in all civil cases. *Id.* Thus, once an amended complaint is filed, only that complaint remains pending before the Court.